No. 138.

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Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

Filed Nov. 27, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

A. J. DAGGS,
R. E. DAGGS,
Appellants,
vs.
THE PHŒNIX NATIONAL BANK.,
} No. 138.

Motion Suggesting Diminution of Record and for Certiorari.

A. J. DAGGS,
Attorney for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1899.

A. J. DAGGS,
R. E. DAGGS,
Appellants,
vs.
THE PHŒNIX NATIONAL BANK.
No. 138.

Appeal from the Supreme Court of the Territory of Arizona.

Comes now the said Appellants, by their counsel, and suggests diminution of the record in this court, in this, to wit:

1. There is no statement of fact in the nature of a special verdict, or objections to the rulings on admission or rejection of evidence, and exceptions thereto, made and certified by the Supreme Court of Arizona Territory in the transcript of record filed in this court in this case, and the same is omitted from the transcript.

REASONS FOR DELAY.

RULE 14.

Appellants show to this court as their special reasons why the above suggestion was not made at the first term of the entry of this cause.

1st. Judgment was rendered in this case April 16, 1898, by Supreme Court of Arizona Territory.

2d. That Appellants made their application for allowance of appeal, to this court, and same was allowed on June 6, 1898. That the transcript of the record of this case was lodged with the Clerk of this Court August 6, 1898, and was filed September 19, 1898; that Supreme Court of Arizona Territory did not meet until second Monday in January 1899; that when such court met Appellants called attention to and asked that statement of facts and objections to rulings on admission and rejection of evidence and exceptions thereto be made, and court intimated that it would be done. That thereafter, at same term, on May 31, A. D. 1899, after service on Appellee's counsel, on May 29, A. D. 1899, Appellants filed their notice and motion in Supreme Court of Arizona Territory asking that a statement of facts and objection to rulings, etc., be made and filed *Nunc pro tunc* as of date of rendition of judgment. That said court remained in session two days and had such motion in their possession during all such time. Appellants pressed for ruling. The court on June 2, A. D. 1899, made the following minute entry: "In this cause it is ordered that the motion for the court to sign and file statements of facts, filed herein by Plaintiff in Error be submitted," and thereupon immediately made the following order: "It is ordered that this court stand adjourned *sine die*."

That thereafter, on October 30, 1899, a special session of the Supreme Court of Arizona was held.

That on November 1, 1899, said court adjourned to January 6, 1900, by the following order: "It is ordered that this court stand adjourned until January 6, 1900."

That thereafter, on November 2, A. D. 1899, there was filed in the office of the Clerk of the Supreme Court a paper purporting to be the statement of facts in this case, and the same is now on file in the court below as part of the record in this case.

That Appellants filed their objections thereto. Having theretofore tendered their statement of facts and objections to rulings on admission and rejection of evidence and exceptions thereto, and same are on file in court below as part of the record in this case.

Wherefore the said Appellants moves the Honorable Court, under Rule 14, to award a writ of certiorari to be issued, and directed to the Judges of said Supreme Court of the Territory of Arizona, commanding them that, searching the record and proceedings in said cause, they forthwith certify to this court those parts of said record so omitted as aforesaid, to wit: the notice and motion of appellants filed May 31, A. D. 1899, and the rulings and orders thereon; the statement of facts, made by the court below in this cause; also the objections of the Appellants to said statement of facts; also the statement of facts and bill of exceptions tendered by the Appellants, now on file in the Supreme Court of Arizona Territory.

A. J. DAGGS,
Attorney for Appellants.

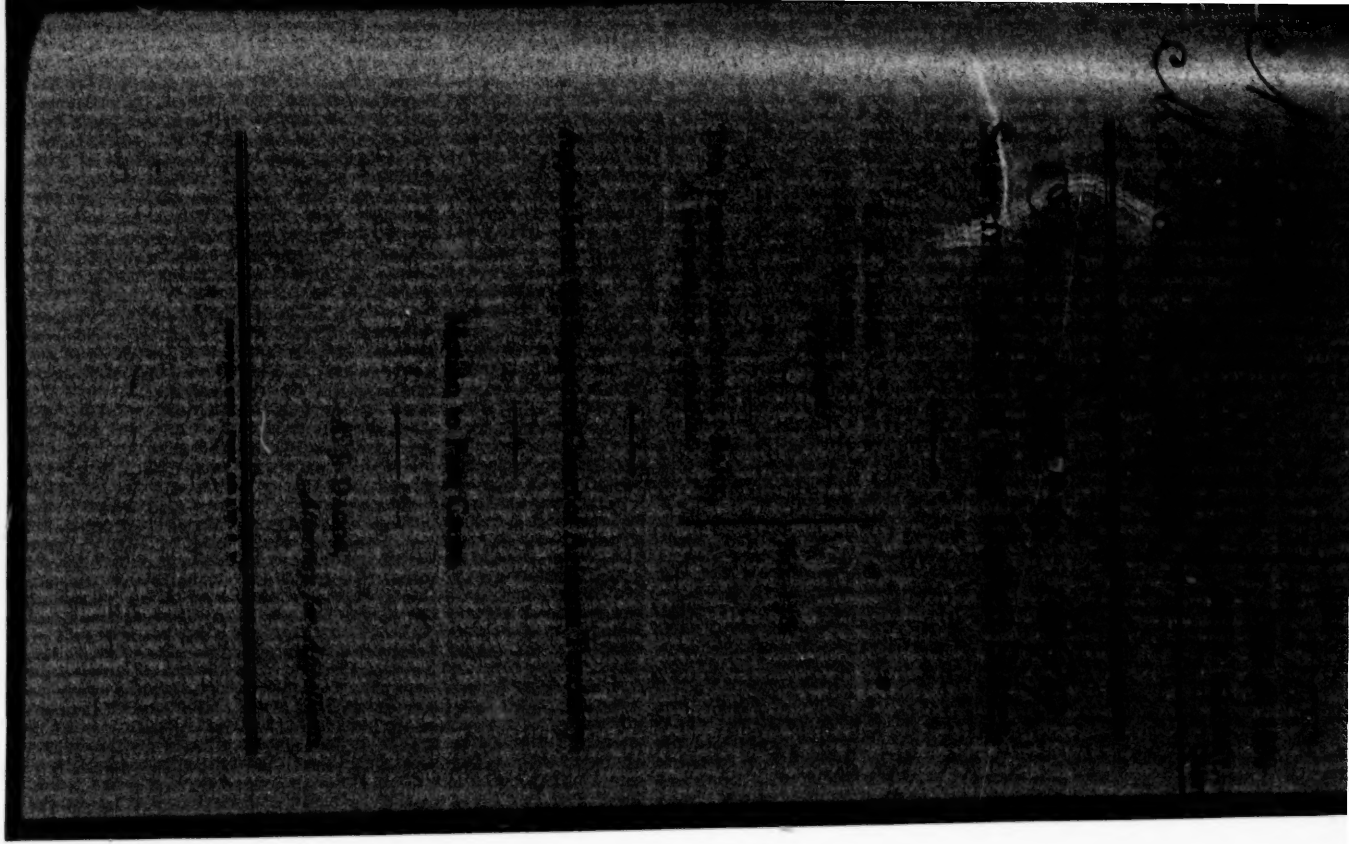
DISTRICT OF COLUMBIA, }
WASHINGTON CITY, } *ss:*

A. J. Daggs, being duly sworn, deposes and says that he is one of the Appellants in the above entitled cause. That he has read the above and foregoing motion and knows the matters and facts therein stated are true.

A. J. DAGGS.

Subscribed and sworn to before me this 22d day of November, 1899.

[SEAL.] JAMES D. MAHER,
Notary Public, District of Columbia.



IN THE

Supreme Court of the United States.

R. E. DAGGS,
A. J. DAGGS,
Appellants,

vs.

THE PHŒNIX NATIONAL BANK,
A Corporation, *Appellee.*

No. 138.

Appeal from the Supreme Court of Arizona Territory.

Motion to Pass Cause.

Comes now the appellants by counsel herein and moves the Honorable Court to pass and continue this case from its regular call on the docket and place it at the foot of the docket and for reasons and grounds therefor allege and show.

NOTICE.

TO THE PHŒNIX NATIONAL BANK, *Appellee:*

Take notice that on December 7, 1899, at the court room of the Supreme Court of the United States in the

city of Washington, D. C., at the opening of said court at 12 o'clock of said day, or as soon thereafter as the court will permit, appellants will move said court to continue and pass this case from its regular call to the foot of the docket.

A. J. DAGGS,
Attorney for Appellants.

That the appeal herein was allowed by a Justice of this Court on June 6, A. D. 1898.

That on August 6, 1898, the parts of the record then on file in the court below was lodged with the clerk of this Court and on September 19, A. D. 1898, filed.

That the Supreme Court of Arizona was not in session on June 6, 1898, and did not meet again until second Monday in January, 1899, and during all the time between June 6, 1898, and second Monday in January, 1899, there was no opportunity to move the Supreme Court of Arizona to make and "certify the rulings of the court on the admission and rejection of evidence when excepted to" in this cause.

That when the Supreme Court of Arizona did meet in January, 1899, appellants moved orally, as is the usual and customary practice in such cases in that court, for the court to make and "certify the rulings of the court on the admission and rejection of evidence when excepted to" in this cause, and the court said it should be done.

That delay happened and the said Bill of Exceptions was not made, and on May 31, A. D. 1899, the appellants filed the following papers:

IN THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

R. E. DAGGS and A. J. DAGGS,
Plaintiffs in Error,
vs.
THE PHŒNIX NATIONAL BANK,
A Corporation,
Defendant in Error.
} Notice.

To the Pœnix National Bank and L. H. Chalmers, its attorney of record, take notice that above-named plaintiffs in error will present the original "Statement of Fact" and "Objections and Exceptions to Admissions and Rejection of Evidence," as shown by the record, a copy of which is herewith served on you, to the court in this cause on June 1, A. D. 1899, at 10 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, and will there move the court to sign and certify same, and for order allowing same to be filed *nunc pro tunc* as of date April 16, 1898, the date of rendition of judgment by this Court in this case.

A. J. DAGGS,
Attorney for Plaintiffs in Error.

Rec. service within notice this May 29, 1899.
L. H. CHALMERS,
Atty. for Deft. in Error.

Filed May 31, 1899.
LLOYD JOHNSTON,
Clerk.

IN THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

R. E. DAGGS and A. J. DAGGS, *Appellants and Plaintiffs in Error,* *vs.* THE PHŒNIX NATIONAL BANK, A Corporation, *Appellee and Defendant in Error.*	Motion to Court to sign and file statement of facts and objections and exceptions to evidence.

Comes all the appellants by their attorney, A. J. Daggs, and moves the court to sign and certify the "Statement of Facts" and "Objections and Exceptions to Admissions and Rejection of Evidence" in this cause, as shown by the record, and order the same to be filed by the clerk of this court *nunc pro tunc*, as of date April 16, A. D. 1898, the day of rendition of judgment by this court in this cause.

A. J. DAGGS,
Attorney for Appellants.

Rec. service copy within motion this May 29, 1899.
L. H. CHALMERS,
Atty. for Deft. in Error.

Filed May 31, 1899.
LLOYD JOHNSTON,
Clerk.

That the court below was in session thereafter on June 1st and 2d, and appellants on opening of court on June 1, 1899, called up their motion and ask for a ruling, and then again on June 2, 1899, pressed for ruling, at the same

time tendered their "objections to the rulings of the court on the admission and rejection of evidence when excepted to" for adoption, and the court below on June 2, 1899, made the following order: "In this cause it is ordered that the motion for the court to sign and file statement of facts filed by the plaintiff in error be submitted" and thereafter immediately made the following order: "It is ordered that this court stand adjourned *sine die*."

SUPREME COURT, }
Territory of Arizona. } *ss:*

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the above and foregoing to be a full, true, and correct copy of the Notice of Application to Supreme Court to make motion asking Court to make Statement of Facts, the motion, the order submitting motion, and the order adjourning Court June 2, 1899, *sine die*.

I further certify that this is all the record concerning the said motion in the said above-entitled cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Court this 22d day of August, A. D. 1899, at Phœnix, Arizona.

LLOYD JOHNSTON,

[SEAL.] *Clerk Supreme Court,*
Territory of Arizona.

The motion referred to in this order is the same motion hereinbefore copied.

That delay again happened. The court below held a special session on October 30, A. D. 1899. Appellants again ask for a ruling on their motion to the court to make and "certify rulings of the court on the admission and rejection of evidence when excepted to" and tendered their "objections to ruling on evidence and exception," and the court on November 1, A. D. 1899, made the following order: "It is ordered that this court stand ad-

journed until January 6, A. D. 1900," and although the above motion copied herein had been on file since May 31, 1899, and submitted some five months, still the court below did not rule on it, for or against the appellants, neither did the court below accept or refuse the "rulings of the court on the admission or rejection of evidence and exceptions thereto" made and tendered by the appellants, neither did it make or certify "the rulings of the court on the admission or rejection of the evidence when excepted to on its own motion" as appears by the record on file in this cause in that court, neither would it refuse to do it, and delay is again happening at no fault of appellants.

That the record in this cause as it now stands, is first, all such papers as were on file in the court below on June 6, 1898, are transcripted and on file in this Court; second, that a so-called statement of facts was made and filed in court below November 2, 1899, and is still on file in that court. Third, the court below has never made or "certified the rulings of the court on the admission or rejection of evidence when excepted to," although the motion asking such court to do so has been submitted now more than five months and such court has been twice in session and adjourned to meet again January 6, 1900.

That this cause will possibly be reached on its regular call in this Court before the holidays and appellants do not desire to encumber this court with a piecemeal or improper record.

That, although appellants have been notified by the clerk of this court to provide for the printing of the record, and appellants are ready and want to do so, yet, the record, in its present detached and fragmentary state can not be printed and brought properly before this court so as this court can pass upon the merits of this case without the "certified rulings of the court on the admission and rejection of evidence when excepted to" (or Bill of Exceptions).

That there are in the record and proceedings in this

cause many rulings of the court to the admission and rejection of evidence, duly excepted to by appellants, which rulings are prejudicial to appellants' rights, as they believe, and this court will not review the evidence without the rulings of the court below on the admission and rejection of evidence when excepted to, unless the same are duly certified to this court by the court below.

That this motion is not made for vexation or delay, but to save substantial rights. Wherefore, appellants pray this Honorable Court to pass and continue this case to the foot of the docket, and consolidate and hear this motion with appellants motion for certiorari in this cause, and indicate such practice as will be proper to save the substantial rights of the appellants in the premises that justice may be done.

A. J. DAGGS,
Attorney for Appellants.

DISTRICT OF COLUMBIA, } *ss:*
Washington City. }

A. J. Daggs, being first duly sworn says that he has read the above and foregoing motion and knows the matters and facts therein stated are true.

.....

Subscribed and sworn to before me this 6th day of December, 1899.

.....
Notary Public.

My commission expires.....

MOTION

No. 442, 138

Br. of Britton & Browne for Appellee on mo.

SUPREME COURT U. S.
FILED
OCT 14 1898
Clerk.

Supreme Court of the United States.

October Term, 1898.

Filed Oct. 14, 1898.

A. J. DAGGS,
R. E. DAGGS,
APPELLANTS,
v.
THE PHŒNIX NATIONAL BANK.

No. 417

Appeal from the Supreme Court of the Territory of Arizona.

Motion to Vacate Supersedeas Bond or for Additional Security.

A. T. BRITTON,
A. B. BROWNE,
Attorneys for Appellee.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

A. J. DAGGS,
R. E. DAGGS,
APPELLANTS,
v.
THE PHŒNIX NATIONAL BANK.

No.

MOTION TO VACATE SUPERSEDEAS BOND OR FOR ADDITIONAL SECURITY.

Now comes The Phœnix National Bank, appellee, and by its counsel, in above-entitled cause, respectfully moves this honorable Court that the supersedeas herein be vacated, or other security be required, and that the amount of supersedeas bond be increased to the sum of $10,000. And in support of this motion submits the accompanying proof.

A. T. BRITTON,
A. B. BROWNE,
Atty's for Appellee.

To A. J. DAGGS and R. E. DAGGS,

Appellants:

Please take notice that on Monday, the 17th day of October, 1898, at the Court room of the Supreme Court of the United States, in the city of Washington, at the opening of said Court at 12 o'clock of said day, or as soon thereafter as counsel can be heard, the appellee, The Phœnix National Bank, will move said Court to vacate the supersedeas, or to increase the supersedeas bond given by you in said cause and for other and additional security. Said motion will be heard upon the certificates and affidavits whereof copies are hereto annexed.

A. T. BRITTON,
A. B. BROWNE,
Atty's for Appellee.

STATEMENT.

The appellee Bank seeks to foreclose 4 mortgages on certain realty of appellants given to secure an indebtedness amounting, with interest and costs, to over $12,000. Decree of foreclosure was entered in the trial court and affirmed on appeal by the Supreme Court of Arizona Territory. (53 Pac. Rep. 201.)

Thereupon appeal was prayed and allowed to this Court, the certificate of the Chief Justice of the Supreme Court of Arizona herewith submitted, reciting :

IN THE SUPREME COURT OF THE UNITED STATES.

THE PHŒNIX NATIONAL BANK, a Corporation, Plaintiff, Respondent,
v.
A. J. DAGGS and R. E. DAGGS, Defendant and Appellants.

I, Webster Street, Chief Justice of the Territory of Arizona, hereby certify that in the case of The Phœnix National Bank against Daggs, decision of the Territorial Supreme Court was filed April 16, 1896. Soon thereafter, and not later than the 20th day of May, 1898, appellant Daggs presented application for appeal to the Supreme Court of the United States. The appeal was allowed, and the cost bond fixed at the sum of five hundred dollars, and supersedeas bond was fixed at the sum

of ten thousand dollars after full hearing of attorneys at Chambers of condition of mortgage security.

This statement is made at the request of appellees.

WEBSTER STREET.

And the certificate of the Clerk of the Supreme Court of Arizona herewith submitted, which recites:

IN THE SUPREME COURT, *Territory of Arizona*, } ss:

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify, during the month of May, A. J. Daggs, attorney for plaintiff in error in the case of R. E. Daggs *et al. v.* The Phœnix National Bank, did come in this office with several papers to be filed in above case in regard to the appeal to the United States Supreme Court. I said to Mr. Daggs that I could not file his papers until he paid the balance of cost in said case. The said A. J. Daggs did not make a deposit and I did not file the papers at that time by reason of the following rule of our Supreme Court:

"In all civil cases the appellant, or plaintiff in error, "shall deposit with the Clerk of this Court twenty dollars, "and the appellee, or defendant in error, ten dollars.

"The Clerk will not be compelled to docket any case or "to file any paper until such appearance fee is paid. As "soon as the amounts so deposited shall not equal the "costs in this Court of the parties so depositing the same, "then and in every such case the Clerk of this Court may call "upon such party to make an additional deposit of a like "amount, and until such additional amount deposited, the "Clerk will not be compelled to file any papers or do "any other thing in said case for the party that is so in "default."

And I further certify that on the 25th day of June, A. D. 1898, Mr. A. J. Daggs, attorney for plaintiff in error, did come in my office and arrange with me part of the cost in said case, and I therefore filed the following papers: Assignment of errors, allowance for an appeal, appeal bond, citation to the United States Supreme Court, and supercedeas.

In witness whereof I have hereunto set my
[SEAL.] hand and affixed the seal of said court this 3d day of August, A. D. 1898, at Phœnix, Arizona.

[Signed] LLOYD JOHNSTON,
Clerk of the Supreme Court of the Territory of Arizona.

Ignoring this action by Chief Justice Street, appellants thereafter applied to the Justice of this Court assigned to the Ninth Circuit, representing to the said Justice, as counsel are informed, that the Court below refused to act upon the application for appeal.

The Hon. Justice of this Court thereupon, on June 6, 1898, allowed an appeal fixing the supersedeas bond at $4,000, and accepting and approving the bond tendered on June 18, 1898, upon presentation of two certain telegrams, one understood to be from a bank in Arizona, and directing that such telegrams be attached to said original bond and filed therewith with the Clerk of the Supreme Court of Arizona.

On that point we submit the following certificate from said Clerk:

IN THE SUPREME COURT, *Territory of Arizona*, } *ss*:

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify that there were no

letters or telegrams filed with the supersedeas bond in the case of R. E. Daggs *et al. v.* The Phœnix National Bank, nor was there anything filed with said supersedeas bond tending to show why said bond was allowed.

I further certify that the only papers filed in this office pertaining to this appeal up to the present are the following: Allowance of an appeal, appeal bond, assignment of errors, citation, supersedeas.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 3d day of August, A. D. 1898, at Phœnix, Arizona.

[COURT SEAL.] (Signed) LLOYD JOHNSTON,
Clerk of the Supreme Court
of the Territory of Arizona.

And the following affidavit:

IN THE SUPREME COURT OF THE UNITED STATES.

PHŒNIX NATIONAL BANK, a Corporation, Respondent,
v.
A. J. DAGGS & R. E. DAGGS, Appellant.

TERRITORY OF ARIZONA, *County of Maricopa*, } *ss:*

William Christy, being first duly sworn, deposes and says:

That he is President of the Valley Bank of Phœnix, Arizona.

That on or about the 17th day of June, 1898, one A. J. Daggs exhibited to him a list of property, which he, the said A. J. Daggs, stated was a list of the property owned by William M. Billups in Maricopa County, Arizona Ter-

ritory; that said Daggs represented that said William M. Billups owned said property, and that it was free from all incumbrances. Relying upon this list of property and believing that it was unincumbered, I telegraphed Hon. Joseph H. McKenna, at the request of said A. J. Daggs, as follows:

"We consider William M. Billups responsible for "$4,000; has property here considered worth $25,000."

Affiant further says that he has, on this day, been shown an abstract of all of the property owned by William M. Billups in Maricopa County, Arizona, which abstract is certified by the Phœnix Title, Guaranty and Abstract Company to be all the real estate owned by said William M. Billups in Maricopa County.

And affiant further says that he finds, upon an examination of said abstract, that all the property owned by said William M. Billups is seriously incumbered; that at this time affiant does not believe said William M. Billups is good financially as a surety on a bond for the sum of four thousand dollars ($4,000).

Affiant further says that at the time he sent the telegram referred to he did so upon the assurance that the list shown him was correct, and upon the further assurance that the property contained in the list was free and clear of all incumbrances.

(Signed) WM. CHRISTY.

Subscribed and sworn to before me by the said William Christy this 8th day of August, A. D. 1898.

[SEAL.] THOS. D. BENNETT,
Notary Public.

My commission expires September 13, 1899.

The certificate of The Phœnix Title, Guaranty and Abstract Co., referred to in foregoing affidavit, is herewith submitted and reads as follows:

(Copy.)

PHŒNIX, ARIZONA, *August* 1, 1898.

We do hereby certify that the following two (2) pages show all the real estate of William M. Billups in Maricopa County, Arizona Territory, as the same appears of record, together with the incumbrances thereon.

[SEAL.] THE PHŒNIX TITLE, GUARANTY AND ABSTRACT CO.,
(Signed) By CHAS. H. MOORE,
Manager.

(Copy.)

List of Real Estate belonging to William M. Billups in Maricopa County, Arizona Territory, with incumbrances thereon:

The N.W. ¼ of the S.E. ¼ of Sec. 10, T. 1 North, Range 5, which appears to be without incumbrance, except the judgments.

The N. ½ of Sec. 19, T. 1 South, Range 5 East.

Subject to mortgage from A. J. Daggs to P. J. Cole, dated May 18, 1894, recorded in Book 18 of Mortgages at page 505, on N.W. ¼ of Sec. 19, T. 1 S., R. 5 E., except the East 51.53 acres (and other land) given to secure a note for $9,000.00, dated the 17th day of May, 1894, due in one year with interest at 1¼% per month.

Also subject to mortgage from R. E. Daggs to Phœnix National Bank, dated the 28th day of November, 1894, recorded in Book 20 of Mortgages, at page 205, on the N.E. ¼ and the East 53.33 acres of the N.W. ¼ of Sec. 19, T. 1 S., R. 5 E. (and other land), given to secure a note dated Nov. 1, 1894, for $9,741.73, due in one year, with interest at 10% per annum. Suit for foreclosure of this mortgage has been appealed to the Supreme Court of the United States.

Also subject to mortgage, from A. J. Daggs to Phœnix National Bank, dated the 28th day of November, 1894, on the N.W. ¼ of Sec. 19, T. 1 S., R. 5 E., except the East 51.53 acres (and other land), recorded in Book 20 of Mortgages, at page 208, given to secure a note dated November 1, 1894, for $9,741.73, due on or before one year, with interest at 10% per annum. Suit for foreclosure same as above.

Also subject to the following tax sales :

Certificate No. 38, year 1893, on N.E. ¼ of N.E. ¼ of N.E. ¼, $23.15.

Certificate No. 39, year 1893, on 55½ acres of E. ½ of N. W. ¼, $10.03.

Certificate No. 77, year 1890, on N.E. ¼, $8.74.

Certificate No. 96, year 1894, on S. ½ of N.E. ¼, $27.25.

Certificate No. 391, year 1896, on W. 15 acres of N.W. ¼ of N.W. ¼, $74.56.

Certificate No. 343, year 1897, on 1 acre in N.W. cor. of N. ½, Sec. 19, $75.89.

The S. ½ of the N.E. ¼ of S.W. ¼ of Sec. 3, T. 1 S., R. 5 E.

Subject to tax deed dated June 14, 1898, to W. K. James, on the N. ½ of S. ½ of N.E. ¼ of S.W. ¼ of Sec. 3, T. 1 S., R. 5 E., for taxes of year 1896.

Also lots 2 and 3 in block 14 in Collins' Addition to the City of Phoenix, subject to judgments only.

Judgments against William M. Billups:

No. 2217, in favor of Arizona Central Bank, dated June 9, 1896.

Balance due on judgment May 25, 1897, $76.45.

No. 2362, in favor of Utah Irrigating Ditch Co. *et al.*, dated November 27, 1896, for the sum of $256.25 costs.

We present also the certificate of the County Assessor, as follows:

Certificate of County Assessor.

Maricopa County, Arizona Territory.

Name of tax payer: Wm. M. Billups.

Property:

N.E. ¼ of Sec. 10, T. 1 N., R. 5 E., 160 acres, val.		$1,760.	Imps.	$300.
N.W. ¼ of S.E. ¼, Sec. 10, 1 N., R. 5 E., 20 acres,	"	275.		
N.E. ¼ of N.W. ¼, Sec. 10, 1 N., R. 5 E., 40 acres,	"	440.		
S. ½ of N.E. ¼ of S.W. ¼, Sec. 3, T. 1 S., R. 5 E. ..... 20 acres,	"	240.		
Lots 2 and 3 in block 14 Collins Add. (to Ph.)	"	220.	Imps.	1,200.
2 stallions, $200. Cow, $25. Buggy, $25. 1 wagon, $25. 2 harness, $10. 1 mower, $15. 25 S. horses, $375, H. & K., $100—Total $775.				
		$775	$2,935	$1,500
Total assessment.....				$5,210

Name of tax payer: The London Co.

Property:

N. ½ of Sec. 19, Tp. 1 S., R. 5 E., 320 acres. Val. $2,560.

TERRITORY OF ARIZONA, } ss:
County of Maricopa. }

I, Frank Luke, County Assessor in and for the County of Maricopa, and Territory of Arizona, do hereby certify that the foregoing page shows a true and correct copy of the assessment of Wm. M. Billups, including all real and personal property, as appears of record on page 57 of Book 1 of the Duplicate Assessment Roll of said Maricopa County, Arizona Territory, for the year 1898.

I further certify that the foregoing page shows a part of the property assessed to the London Co., as appears of record on page 92 in Book 3 of the Duplicate Assessment Roll of Maricopa County, Arizona Territory, for the year 1898, and that said showing is true and correct.

I further certify that in my judgment the said foregoing described property is listed and assessed at its cash value.

In witness whereof, I have hereunto set my hand this 9th day of August, A. D. 1898.

FRANK LUKE,
Assessor.

There is also submitted the following affidavit:

IN THE SUPREME COURT OF THE UNITED STATES.

PHŒNIX NATIONAL BANK, a Corporation, Respondent,
v.
A. J. DAGGS and R. E. DAGGS, Appellants.

TERRITORY OF ARIZONA, } ss:
County of Maricopa. }

Jerry Millay, being first duly sworn, deposes and says: That he has lived in Maricopa County, Arizona, for six-

teen years last past; that he is well acquainted with real estate values in said County and Territory, and at one time was engaged in loaning money thereon; that he knows the property owned by William M. Billups, as shown by the records of Maricopa County, and has examined the incumbrances thereon; that in his opinion nothing could be collected from said William M. Billups under execution; that he does not consider that said William M. Billups would be good for any amount of money whatsoever on an appeal bond or upon any other kind of a bond.

(Signed) JERRY MILLAY.

Subscribed and sworn to before me this 15th day of August, A. D. 1898.

[SEAL] LAVINIA M. ANDREWS,
Notary Public.

Commission expires July 15, 1900.

This proof demonstrates the utter insufficiency of the surety—Billups—on the present supersedeas bond, and the manner in which the approval of the honorable Justice was obtained thereto.

The land embraced by the mortgage and foreclosure decree is valuable only by its relation to means of irrigation, and such value can only be determined by knowledge of such local conditions. On that head we submit the following affidavit:

IN THE SUPREME COURT OF THE UNITED STATES.

PHŒNIX NATIONAL BANK, a corporation, Respondent,
v.
A. J. DAGGS and R. E. DAGGS, Appellants.

TERRITORY OF ARIZONA, *County of Maricopa*, } *ss*:

L. H. Chalmers, being first duly sworn, deposes and says that he is attorney for respondent in the above-entitled case; that he has lived in Arizona for fourteen years, and is well acquainted with all the land in Maricopa County, Arizona; that such land and all of it is made fertile and valuable only by means of irrigation; that land under some ditches are more valuable than under other ditches; that any person, in order to estimate the value of land at the present time or what it will be worth in the future, must be well and accurately informed on local conditions.

(Signed) L. H. CHALMERS.

Subscribed and sworn to before me this 15th day of August, A. D. 1898.

[SEAL.] LAVINIA M. ANDREWS,
Notary Public.

Commission expires July 15, 1900.

It is therefore most respectfully submitted that under such proven conditions, the action of the Chief Justice of the Territory in fixing the amount of supersedeas bond in the first instance upon this appeal, and as he here certifies, "*after full hearing of attorneys at chambers of condi-*

" *tion of mortgage security,*" should be accepted, and new and sufficient bond in the sum of $10,000 required.

It will be noted from the accompanying proof that the only pieces of real property owned by the surety, Billups, which is unincumbered is forty acres (N.W. ¼ of S.E. ¼ Sec. 10, Tp. 1 N., R. 5. E.), which the County Assessor reports as valued at $275.00, and lots 2 and 3 in block 14 of Collins' addition to Phœnix, which the Assessor certifies is valued at $220.00. The surety's ownership of land in Sec. 19, Tp. 1 S., R. 5 E., is subordinate to the existing mortgages which are the subject of foreclosure in the present suit (as noted on the abstract) and to tax sales for a number of years past. His ownership of twenty acres in Sec. 3, Tp. 1 S., R. 5 E., is noted upon the abstract as subject to an outstanding tax deed, and the value of this tract is given on the Assessor's certificate as but $240.00. It will also be noted that the Assessor certifies that, in his judgment, the property assessed to this surety is " listed and assessed at its cash value."

Analysis of the abstract of title and the certificate of the County Assessor thus abundantly sustains the statements of the affidavits herewith submitted, showing that the present surety is without financial responsibility justifying his retention upon the supersedeas bond.

Further comment upon the showing submitted is unnecessary.

It is obvious therefrom that the honorable Justice who allowed the supersedeas and approved the bond therefor was not informed of the actual facts. In that view we beg to call to the Court's attention the decision in Railroad Company *v.* Schutte (100 U. S. 644), wherein the syllabus recites:

"A *supersedeas* will be vacated when the approval of " the bond therefor was obtained by fraud and perjury.

"If it appears that the appellant had knowledge of "such fraud and perjury, a new bond will not be ac- "cepted.

"The record in this case not being complete or properly "certified, the Court orders that unless appellant causes "the omissions to be supplied on or before a specified "day, the appeal be dismissed."

We respectfully submit that we are entitled to like relief by vacation of the supersedeas, and refusal to permit new bond in present case upon the showing herewith made.

Respectfully submitted.

A. T. BRITTON,
A. B. BROWNE,
Attorneys for Appellee.

APPENDIX.

IN THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

THE PHŒNIX NATIONAL BANK,
Plaintiff, Respondent,
v.
A. J. DAGGS and R. E. DAGGS,
Defendants, Appellants.

Know all men by these presents:

That we, A. J. Daggs and R. E. Daggs, as principals, and Wm. M. Billups, as surety, are held and firmly bound unto the Phœnix National Bank, a corporation, respondent, in the full and just sum of four thousand dollars ($4,000.00), to be paid to the said Phœnix National Bank, a corporation, or its assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the 25th day of May,

in the year of our Lord, one thousand eight hundred and ninety-eight.

Whereas, lately at a session of the Supreme Court of the Territory of Arizona, in a suit pending in said Court between A. J. Daggs and R. E. Daggs and the Phœnix National Bank, a corporation, a final judgment of affirmance was rendered and entered against the said A. J. Daggs and R. E. Daggs, and the said A. J. Daggs and R. E. Daggs, having obtained an allowance of appeal, and filed a copy thereof in the Clerk's office of the said Supreme Court of the Territory of Arizona, to reverse the said judgment in the aforesaid suit, and a citation directed to the said Phœnix National Bank, a corporation, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 5th day of August, A. D. 1898.

Now the condition of the above obligation is such that if the said A. J. Daggs and R. E. Daggs shall prosecute said allowance of appeal to effect, and answer all damages and costs, if they should fail to make their said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

A. J. DAGGS.
R. E. DAGGS.
WM. M. BILLUPS.

TERRITORY OF ARIZONA, }
County of Maricopa, } *ss:*

Wm. M. Billups, being duly sworn on oath, says that he is a resident, householder, and freeholder in Maricopa County, Arizona; that he is worth the sum for which he has become liable on said bond over and above all just debts and liabilities, exclusive of property exempt from execution.

[SEAL.] WM. M. BILLUPS.

Subscribed and sworn to before me this 25th day of May, A. D. 1898.

R. E. DAGGS,
Notary Public.

My commission expires April 8, 1902.

The above and foregoing bond is this day approved by me this the 18th day of June, A. D. 1898.

JOSEPH McKENNA,
Justice of Supreme Court of U. S.

SUPREME COURT,
Territory of Arizona.

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the foregoing to be a full, true, and correct copy of the appeal bond filed by the attorney for plaintiff in error, A. J. Daggs, on the 25th day of June, A. D. 1898, in the said above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 1st day of July, A. D. 1898, at Phœnix, Arizona.

[SEAL.]

LLOYD JOHNSTON,
Clerk of the Supreme Court.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, A. D. 1897.

THE PHŒNIX NATIONAL BANK, a Corporation, Plaintiffs, Respondent,
v.
A. J. DAGGS & R. E. DAGGS, Defendants, Appellants,
} Appeal and Allowance.

The above-named defendants, A. J. Daggs and R. E. Daggs, appellants, conceiving themselves aggrieved by the

order and judgment entered on April 16, A. D. 1898, affirming the judgment of the District Court of Maricopa County, Arizona, rendered and entered on the 12th day of November, A. D. 1896, for the principal sum of nine thousand seven hundred and forty-one and seventy-three hundredths ($9,741.73) dollars, and for attorney's fees the sum of two hundred and thirty-four and thirty-nine one hundredths ($234.39) dollars, and for costs and disbursements the sum of ninety-eight and eighty-five one hundredths ($98.85) dollars, making in all the sum of twelve thousand and fifty-two and ninety-four hundredths ($12,052.94) dollars, and that the said sum of nine thousand seven hundred and forty-one and seventy-three hundredths ($9,741.73) dollars bear interest from date thereof at the rate of ten per cent. per annum, and that the said sum of two thousand three hundred and eleven and twenty-one hundredths ($2,311.21) dollars bear interest from date hereof at the rate of seven per cent. per annum. And with a foreclosure of plaintiff's mortgage lien upon the lands and water rights covered by the said mortgage, as it existed on the 28th day of November, A. D. 1894, in the above-entitled proceedings, doth hereby appeal from said order to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

A. J. DAGGS.

By ,

Atty. for Defendants, Appellants,
A. J. Daggs and R. E. Daggs,
Phœnix, Arizona.

PHŒNIX, ARIZONA TERRITORY,
April 23, *A. D.* 1898.

And now, to wit, on June 6, A. D. 1898, it is ordered that the appeal be allowed as prayed for.

JOSEPH McKENNA,
Justice Supreme Court, U. S.

SUPREME COURT, }
Territory of Arizona. }

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the foregoing to be a full, true, and correct copy of the appeal and allowance filed by the attorney for plaintiff in error, A. J. Daggs, on the 25th day of June, A. D. 1898, in the said above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 1st day of July, A. D. 1898, at Phœnix, Arizona.

[SEAL.]

LLOYD JOHNSTON,
Clerk of the Supreme Court.

IN THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

PHŒNIX NATIONAL BANK, a Corporation, Respondent.
v.
A. J. DAGGS & R. E. DAGGS, Appellants.

TERRITORY OF ARIZONA, }
County of Maricopa. } *ss:*

Having considered the appellants petition for an allowance of appeal to the Supreme Court of the United States, and it appearing on inspection of said case that a

federal question is involved, and it appearing by affidavit before me that the amount involved in said case is more than the sum of five thousand dollars ($5,000.00), exclusive of interest and costs, and that said case being for the foreclosure of a mortgage lien upon ample and sufficient property to satisfy the judgment and all costs, and that the said property necessarily follows the suit, and said appeal having been allowed, as prayed for in said allowance of appeal, and a supersedeas bond in the sum of four thousand dollars having been presented and approved by the undersigned, it is ordered that all proceedings on said judgment in said case shall be stayed until the proceedings on said appeal in said cause shall be determined by the Supreme Court of the United States, and any remititures heretofore issued shall be forthwith returned (with all record papers) to the Supreme Court of Arizona.

JOSEPH McKENNA,
Justice Supreme Court, U. S.

JUNE 18, A. D., 1898.

SUPREME COURT, }
Territory of Arizona. }

I, Lloyd Johnston, Clerk of the Supreme Court of the Territory of Arizona, do hereby certify the foregoing to be a full, true, and correct copy of the supersedeas filed by the attorney for plaintiff in error, A. J. Daggs, on the 25th day of June, A. D. 1898, in the said above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 1st day of July, A. D. 1898, at Phœnix, Arizona.

[SEAL.] LLOYD JOHNSTON,
Clerk of the Supreme Court.